

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Government,

HONORABLE GEORGE CARAM STEEH

v.

No. 16-20098

KHALIL ABU-RAYYAN,

Defendant.

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SENTENCING HEARING

Monday, March 13, 2017

- - -

APPEARANCES:

For the Government:

RONALD W. WATERSTREET, ESQ.  
Assistant U.S. Attorney

For the Defendant:

TODD A. SHANKER, ESQ.

- - -

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1 Detroit, Michigan

2 Monday, March 13, 2017

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4 - - -

5 **THE CLERK:** Case Number 16-20098, United  
6 States of America versus Khalil Abu-Rayyan.

7 **THE COURT:** Okay. Good afternoon.

8 **MR. WATERSTREET:** Good afternoon, your Honor.  
9 Ronald Waterstreet on behalf of the United States.

10 **THE COURT:** Welcome.

11 **MR. SHANKER:** Good afternoon. Todd Shanker  
12 on behalf of Mr. Khalil Abu-Rayyan who is standing to my  
13 left.

14 **THE COURT:** Thank you.

15 This is the date and time established for  
16 sentencing in the case. The Court has had the opportunity  
17 to review the sentencing memoranda submitted by both  
18 sides, along with the Pre-Sentence Investigation Report,  
19 and there are a few issues that may go to the question of  
20 the guideline calculation that I understand needs to be  
21 resolved, is that right?

22 **MR. SHANKER:** Yes, your Honor. We would  
23 stand by the objections that I filed in writing. I have  
24 nothing to add to that, but we did object to the two point  
25 enhancement for possession of three additional guns on

1 November 15, 2015, and we do object to not receiving the  
2 final acceptance point, because Mr. Rayyan has been  
3 complying throughout the proceedings, and I don't  
4 understand why he is not getting that third point.

5 **THE COURT:** Okay. As it relates to the first  
6 argument, the three firearms, this deals with one of the  
7 sentencing factors in relation to the charges in Count 2,  
8 is that right, possession of a firearm by a prohibited  
9 person?

10 **MR. SHANKER:** That's correct, your Honor.

11 **THE COURT:** Okay. Mr. Waterstreet?

12 **MR. WATERSTREET:** Your Honor, we filed a  
13 response. I think Probation Department made a  
14 recommendation to the Court concerning our response, that  
15 the three additional firearms actually involved one  
16 firearm in which he has a photograph of himself holding a  
17 firearm that predated this particular offense, two other  
18 firearms post-dated this offense, in which he was  
19 possessing an AK-47 and an AR-15, and there was an  
20 additional handgun that he used during his concealed  
21 pistol license class.

22 So there were actually five guns involved, plus  
23 the additional gun that he attempted to purchase shortly  
24 after he was arrested and tried to buy another gun again.

25 So any number of those guns or combination of

1 those guns clearly meet the requirement that he should get  
2 two additional enhancement points.

3 **THE COURT:** As it relates to the firearm with  
4 the -- that appeared in the photograph, that was an AR --

5 **MR. WATERSTREET:** One was an AK-47, and  
6 there's another picture he posted that was an AR-15.  
7 Those are both on the same day, November 17th.

8 **THE COURT:** All right.

9 **MR. SHANKER:** Your Honor, if I could respond.  
10 I don't think the count of the number of guns is correct  
11 there. He was given two additional points for three  
12 additional firearms. One, they all occurred on the same  
13 day, November 15th. He attempted to buy a gun at a  
14 sporting goods store on that day, and again, he was not  
15 charged with any crime at this point, and that application  
16 did not go through. He did not get the gun, but he did  
17 attempt later that day, the same day that he was taking a  
18 CPL class.

19 At the CPL class, there was an AK and an AR that  
20 were rented on the range, and one of them actually didn't  
21 work, and that's why they ended up getting the second one,  
22 but they did possess those firearms on that day for a  
23 brief period of time, but it's three additional firearms.  
24 I'm not sure what these other guns are that the prosecutor  
25 is referring to.

1                   **THE COURT:** All right. Mr. Waterstreet?

2                   **MR. WATERSTREET:** Your Honor, three  
3 additional guns. Four total is enough for the two point  
4 enhancement.

5                   **THE COURT:** And the -- if one of those was  
6 not operable, would that make a difference?

7                   **MR. WATERSTREET:** No.

8                   **THE COURT:** Okay. All right. Well,  
9 probation also recommends that the Court apply the  
10 enhancement based upon the facts that were known. I think  
11 it is appropriate under those circumstances, and we'll  
12 side with the application of that enhancement, which would  
13 leave us with a -- before dealing with the one level for  
14 acceptance and responsibility that has not been awarded,  
15 the Court will conclude -- I guess I should address that  
16 first.

17                   Mr. Waterstreet, what's your response to that?

18                   **MR. WATERSTREET:** Your Honor, the guideline  
19 section which we are referring to for acceptance of  
20 responsibility is very clear. It's only upon the motion  
21 of the United States for that third point that the  
22 defendant is entitled to it, and the case law is rather  
23 clear on whether the only way in which the Court can find  
24 that it is inappropriate, is if the United States relies  
25 upon unconstitutional reasons for denying that, and in

1 the -- and there's nothing unconstitutional about the  
2 reason why the United States is denying this is because of  
3 the additional amount of additional time the United States  
4 had to -- and this Court -- had to involve itself in in  
5 the resolution of this matter.

6 We had two detention hearings -- actually three  
7 detentions hearing altogether, one before the magistrate  
8 and two before your Honor -- and they were very lengthy.  
9 The United States had to prepare as it similarly as it  
10 would for trial for examination of their experts they  
11 chose to put on, and the United States ended up filing a  
12 pretrial motion anticipating trial before the defendant  
13 entered his guilty plea.

14 So those are a number of difference reasons why  
15 the third point is not applicable.

16 **THE COURT:** All right.

17 **MR. WATERSTREET:** And I believe the Probation  
18 Department found that -- made that finding as well.

19 **THE COURT:** Okay. Any other argument, Mr.  
20 Shanker on that?

21 **MR. SHANKER:** Your Honor, I would just say  
22 that Mr. Rayyan has not caused any delay. He did the  
23 work. There was one bond motion after the case initially  
24 came to your Honor, and the government sought to have him  
25 examined by a forensic examiner for a lengthy period of



1 time, 24 hours a day, and he underwent that examination  
2 for several months. He came back, and we sought a bond  
3 again, but we didn't file any substantive motions, and I  
4 was in plea negotiations with Mr. Waterstreet as soon as  
5 he came back from Massachusetts from the BOP.

6 So I don't understand why that point is being  
7 withheld, and even now within two days after his bond  
8 hearing, we contacted the Court and said he's going to  
9 plead guilty.

10 So I really -- I've never dealt with a situation  
11 where a point has been withheld under these circumstances,  
12 but Mr. Waterstreet is correct that it is within his  
13 discretion. It's my position that it's an abuse of  
14 discretion.

15 **THE COURT:** All right. I think he's made out  
16 a -- by his virtue of the statement, that is  
17 Mr. Waterstreet, that explains his reasoning. Whether we  
18 agree with it or not, I think it is within the discretion  
19 of the government to withhold the point for timely  
20 acceptance, and the Court will, therefore, apply that  
21 point that as well, which raises the guideline range to a  
22 range of 15 to 21 months.

23 **MR. WATERSTREET:** That's my understanding.

24 **MR. SHANKER:** That's correct, your Honor.

25 **THE COURT:** And so the Court will adopt that

1 as the guideline range that the Court should consider in  
2 determining an appropriate sentence in this case, along  
3 with those factors that are enumerated in Section 3553(a),  
4 and Mr. Shanker would you like to address those factors?

5 **MR. SHANKER:** Yes, your Honor. Could I  
6 please get the shackles removed for Mr. Rayyan, or at  
7 least the belly shackles? I mean, he wants to make a  
8 statement to the Court, and he's got papers that he wants  
9 to hold. I was wondering if we could get at least the  
10 belly shackle removed?

11 **THE COURT:** Does he have them around the  
12 ankles as well?

13 **THE MARSHAL:** Yes, your Honor.

14 **THE COURT:** How about it? Are you  
15 comfortable with the ideal of removing them?

16 **THE MARSHAL:** We can remove one.

17 **THE COURT:** Okay.

18 **MR. SHANKER:** Thank you.

19 **MR. WATERSTREET:** In the interim, can the  
20 Court inquire whether the defendant had the opportunity to  
21 review the Pretrial Services Report, and whether there is  
22 any other objections that he has beyond the two that's  
23 been raised by counsel?

24 **THE COURT:** Mr. Shanker to address it  
25 first --

1                   **MR. SHANKER:** Sure, your Honor.

2                   **THE COURT:** -- and I'll address it to the  
3 defendant.

4                   **MR. SHANKER:** Mr. Rayyan and I did review the  
5 PSR. We have no additional objections.

6                   **THE COURT:** All right. Mr. Rayyan, you heard  
7 your lawyer indicate that you reviewed the Pre-Sentence  
8 Investigation Report with your attorney?

9                   **THE DEFENDANT:** Yes, your Honor.

10                  **THE COURT:** And there are no other objections  
11 that you're aware of at this point?

12                  **THE DEFENDANT:** No, your Honor.

13                  **THE COURT:** All right. Go a head.

14                  **MR. SHANKER:** Thank you, your Honor.

15                         As you just stated, Judge, you calculated the  
16 guideline range of 15 to 21 months, and just so we don't  
17 lose focus here, I want to state that he pled guilty to  
18 making a false statement about his use of marijuana while  
19 trying to obtain a firearm, and then obtaining that  
20 firearm. This is the same gun that he's also been  
21 connected for at the state level, and he was punished for  
22 two years probation on that, and again, this was  
23 possession for two days, October 5th through October 7,  
24 2015. That's how long he was possessed that gun.

25                         Despite the guideline of 15 to 21 months, the

1 government is asking for a sentence of eight years based  
2 on its contention that Mr. Rayyan is a terrorist, and your  
3 Honor, the government's request makes it appear that this  
4 is a very difficult sentencing decision, and your Honor, I  
5 don't think it is as difficult as it appears, because when  
6 we look at actual facts of the case that have been proven,  
7 when we compare this case to other cases in this district,  
8 and we look at the opinions of the mental health experts  
9 in this case, including the government's own expert, and  
10 his extraordinarily detailed evaluation, when we look at  
11 all of that, this case is not as difficult as it might  
12 appear, because Mr. Rayyan is not a terrorist. He never  
13 intended to hurt anybody, and the great weight of the  
14 evidence supports that.

15 The government's request for a variance in this  
16 case, if granted, would gut the core principles of the  
17 Constitution as they apply to Mr. Rayyan, including the  
18 right to be presumed innocent, the right to due process,  
19 both substantive and procedural due process, and the right  
20 to a jury trial.

21 The government is asking for a sentence where the  
22 sentencing tail would wag the charging dog, and the  
23 Supreme Court for over 30 years has said that we have to  
24 look these cases with extreme caution because of the  
25 possible violation of rights, and that's goes all the way

1 back to McMillian versus Pennsylvania in 1985.

2 Your Honor, Mr. Rayyan was an immature young man,  
3 who made poor decisions, made foolish and scary comments  
4 to an undercover agent who poses a love interest, and  
5 engaged in reckless attention seeking behavior online, and  
6 he is remorseful as can be about that, and I think the  
7 book of letters that we supplied to your Honor show how  
8 much thought he has put into his actions, and how much  
9 they embarrassed his family, his religion, himself, but he  
10 is absolutely not a terrorist or an attempted terrorist,  
11 and there is no proof to support that beyond a  
12 preponderance of the evidence or clear and convincing  
13 evidence.

14 Now, the first thing that I want to point out is  
15 that the Probation Department's guideline range was 15 to  
16 21 months. Probation did not find that there was any  
17 relevant conduct that warranted an upward departure. So  
18 they found there was no preponderance of the evidence to  
19 warrant that departure. The report specifically states  
20 this is in Paragraph 92.

21 Not only that your Honor, they included a section  
22 that analyzed the Section 3553 factors. Not once does the  
23 report suggest that a variance would be necessary or  
24 reasonable under Section 3553, and beyond that, probation  
25 concluded that a sentence that is within the guideline

1 range would reflect the seriousness of the offense,  
2 promote respect for the law, and provide just punishment.  
3 That's a quote.

4 Your Honor, I agreed to two extensions of time for  
5 the government to make its objections in the Pre-Sentence  
6 Report. They did not object to the failure to apply a  
7 departure. They did not object to the assessment of the  
8 3553 factors, and it is my position they've waived the  
9 argument for a variance on the basis that they are asking  
10 for it, namely that he is some sort of terrorist.

11 Secondly, your Honor, there's simply a failure of  
12 proof here, and when we look at variances under Section  
13 3553, the standard is the same as the guidelines. They  
14 have to have a preponderance of evidence to show his  
15 intent, and all the evidence that we have indicates the  
16 opposite. Not just coming from his mouth, but the two  
17 experts who analyzed him and who evaluated him and who  
18 tested him. They found that he did not intend to harm  
19 anybody.

20 Now one of the things that Mr. Rayyan did that was  
21 disturbing in this case is that he was on the Twitter feed  
22 for ISIS, and he owns that, your Honor. He got into this  
23 initially because he was depressed. He was looking for  
24 shock in all entertainment, and he was interested in ISIS.  
25 He is not denying that, but your Honor, he never -- when

1 he's on Twitter, there's no evidence that he ever made any  
2 threats. He didn't join ISIS. He doesn't have any  
3 contacts at all with no one. He doesn't know anyone in  
4 ISIS. He hasn't materially supported terrorism in any  
5 way. He has not flown to Syria to train. He hasn't  
6 trained.

7 Your Honor, what he did on Twitter, he apologizes  
8 for, and he understands what an embarrassment that is, and  
9 how exactly how it looks. He understands that the FBI  
10 would be interested in looking at somebody who is  
11 re-tweeting violent jihadi videos.

12 Look, he owns that. He understands that, but your  
13 Honor, that is protected under the First Amendment. I  
14 know the government says it is not, but in U.S. v  
15 Shehadeh, S-h-e-h-a-d-e-h, a 2013 case out of the Eastern  
16 District of New York, in that case that defendant did the  
17 same things as Mr. Rayyan on the Twitter feed, but he went  
18 far beyond that. He actually set up multiple websites so  
19 that he could personally disseminate ISIS propaganda and  
20 violent execution videos to thousand of other people.

21 The government in that case sought an upward  
22 variance or departure based on his behavior, and the Court  
23 found that the defendant's actions were legal and  
24 protected by the First Amendment, and I'm quoting, the  
25 Court stated: The court does not find the fact that

1 Shehadeh created an administered website regurgitating  
2 violent jihad's propaganda to be an appropriate basis for  
3 punishment or enhancement consistent with the First  
4 Amendment.

5 Your Honor, looking back, Mr. Rayyan, as you know  
6 and as he stated in his video to you, he denounces ISIS.  
7 He understands now that he was -- what he was seeing was  
8 propaganda, and he understands that ISIS is basically  
9 exploiting Islam, and he has learned I think through this  
10 process, but your Honor, what he did was not illegal on  
11 Twitter.

12 Your Honor, the next thing that I want to talk  
13 about are the actual statements that he made that are the  
14 subject of the government's request for this massive  
15 variance.

16 First of all, there is a complete disconnect  
17 between his possession of the gun in October of 2015, and  
18 his statements about a church and an officer that were  
19 made months later in January 2016.

20 In this entire investigation, in the 10 months of  
21 investigation, he possessed a gun on exactly three days.  
22 Three days. Two were the days that he carried the .22  
23 that he was arrested with. That's a .22. That is a six  
24 shot, single loading gun, not the kind of gun that a  
25 terrorist would use. It's manual loading, and then the



1 other day was November 15th, and that was when he tried to  
2 purchase the gun, a second gun, and that was because his  
3 family told him that the only way he could get a CPL was  
4 to take a class and follow the law and get the permit,  
5 because remember, he's not charged with anything at this  
6 point.

7 So he went to the range, and he did. At the end  
8 of the day, they rented AK-47's, he and his cousin, and  
9 they fired them for a matter of minutes with a range  
10 officer present, and that was it.

11 And so your Honor, I mean, when I look at that two  
12 point enhancement, I almost think under 3553, there's a  
13 basis for a variance downward, because it was very  
14 fleeting possession, and the other gun he didn't even  
15 touch, but whatever the case, the point is he never has a  
16 gun when he's making these statements. He's making these  
17 statements because he gets himself into a situation with  
18 these undercover informants posing as love interest -- and  
19 I'm going to talk a little bit more about that in a  
20 moment.

21 I want to take the time here because I think it is  
22 very important. When we were at our last bond hearing,  
23 Mr. Waterstreet showed a photo and admitted a photo of  
24 Khalil's father Ray holding an AK-47, and he didn't give  
25 that to me ahead of time. It happened right in court, and

1 it was sort of look at this. Here's -- this is the gun  
2 that he was talking about.

3 Your Honor, that gun we've submitted an affidavit  
4 on that. That photograph is over seven years old. It is  
5 a gun that belongs to his brother, Khalil's uncle, and Ray  
6 states under oath that Khalil has never had access to that  
7 gun, and your Honor, I think it is worth pointing out that  
8 the search warrant in this case yields nothing. They  
9 don't finding any guns. They don't find any swords, no  
10 explosives, no Anwar Awlaki tapes. The only ammunition  
11 there is at the store is one box of ammunition for the .22  
12 that he owned for two days. That's it.

13 And so your Honor, I want to take this moment to  
14 talk about a case in this district and compare it. This  
15 is the case of Sebastian Gregerson. This individual was  
16 charged with possession of a destructive device with the  
17 intent to cause bodily harm. So he's actually charged  
18 with this unlike Khalil. He is also charged with  
19 unregistered possession of a destructive device. He  
20 possessed weapons of mass destruction. He had grenades.  
21 He had a machete. He had multiple AK's, 16 guns,  
22 thousands of rounds of ammunition, a book on sniper fire,  
23 and this individual, like Khalil, threatened to kill the  
24 infidels. He threatened to kill people.

25 This individual has signed a plea agreement with

1 the government with a guideline range of 37 to 46 months.  
2 Defense counsel has allowed to ask for a downward  
3 variance, and the government has preserved the right to  
4 argue for a departure of 14 months. This very scary  
5 individual is capped at 60 months.

6 Your Honor, there's no -- it makes no sense that  
7 the government is asking for eight years, and this person,  
8 Gregerson has a cap at five years. It makes no sense,  
9 because his case is far more scary. His intent is far  
10 more clear. He has a military cash of weapons, and I  
11 think it speaks volumes about where Mr. Rayyan's sentence  
12 should be. It should be lower than Gregerson's  
13 guidelines, significantly lower, and I want to make that  
14 point.

15 I want to admit to the Court as Exhibit A,  
16 Mr. Gregerson's signed plea agreement.

17 Your Honor, so again, I just want to point out  
18 Mr. Gregerson stated multiple times that he intended to  
19 kill on behalf of ISIS. He actually had contacts too. He  
20 was involved for years with real contacts in the radical  
21 Islamic community. So I use this case to compare with  
22 Khalil's because I think it is important.

23 Now, the statements that Khalil made were not  
24 true, your Honor. They were not true threats. They  
25 weren't true. The government didn't charge him with this.

1 The government didn't seek a relevant conduct enhancement,  
2 and the facts surrounding this are as follows:

3 Khalil was a very immature 21 year old, and he  
4 comes from an Islamic home where he did not -- never had a  
5 girlfriend. He had never touched a woman, and he was  
6 desperate for love of some sort. That's what he was  
7 looking for, and I think what's important, your Honor, is  
8 to focus on the first undercover in this case who went by  
9 Ghadda, because when you look at those transcripts, your  
10 Honor, and we submitted much of them to the Court, but  
11 what I can tell you, and I can tell you from the lack of  
12 submissions by the government, this was purely a love  
13 relationship.

14 There's no discussions of jihad or criminal acts.  
15 They don't talk about trying to commit jihad. They  
16 actually get to know each other. They get to know about  
17 each other's family. They actually become engaged, and  
18 they're talking about -- she's supposedly an accounting  
19 major at Ohio State. They're actually talking about  
20 having her work for the family business, and Khalil's  
21 father is about to drive down to Columbus, Ohio to meet  
22 the family, when all of a sudden Ghadda disappears, and  
23 Khalil is devastated understandably. It may seem silly to  
24 us and lot of other people who have had relationships and  
25 had those connections, but he hadn't. So it was a big

1 deal to him, but you would think if his idea was to commit  
2 an act of terrorism, you would think he would discuss that  
3 with Ghadda, because the government learns first and  
4 foremost that he wants to be married from Ghadda and her  
5 discussions with Khalil.

6 So what happens is as soon as Ghadda disappears,  
7 they put in a second undercover young woman named Jannah.  
8 Jannah holds herself out as an Iraqi Sunni whose husband  
9 was murdered by anti-ISIS forces in Syria. She tells  
10 Khalil early in their conversations -- so this is late  
11 December -- she tells Khalil that she just had two close  
12 family members murdered by anti-ISIS forces in Iraq.

13 She holds herself out as a young girl. She says  
14 that she is 19 years old. She says that she's ready to  
15 commit jihad, but she's also very young and depressed.

16 So defendant's statements, they are false  
17 statements. Defendant's false statements about the church  
18 and police officer are made because they impress her, and  
19 you know what's interesting, is that the government --  
20 there's a line in their memorandum where they say how  
21 could this possibly be flirting? But if you look at their  
22 exhibit, if you look at the exhibit involving the church  
23 statements, Jannah actually says, are you just saying  
24 this, or is it all talk just to make me smile?

25 So there's no question that this was encouraged,

1 but even more telling than the inducement here -- and your  
2 Honor, I've never in 25 years seen inducement like this,  
3 to use emotional inducement on an individual. I've seen  
4 money. I've seen other things, but I've never seen  
5 this -- but beyond all of that, the most important thing  
6 is when Jannah tries to nail him down and say to him,  
7 let's do something, because she says that she has a  
8 connect. She has a connect, and that they can get to  
9 Syria, and they can do this. Every time he says no. He  
10 even tries to talk her out of it. He says, you're young.  
11 You're impressionable. You don't know what you want. I  
12 think that speaks volumes, your Honor.

13 I also want to point out the government says that  
14 it intervened before Mr. Rayyan could doing something that  
15 was imminent. Your Honor, the fact is those statements,  
16 the statement about the church, that was on January 8th.  
17 The statement about the police officer, that was on  
18 January 21st. The government didn't intervene. They  
19 intervened after a February 2nd conversation phone call,  
20 and during that phone call Khalil told the undercover that  
21 he was suicidal, that he was depressed, he wanted to kill  
22 himself, and it's stunningly, the undercover says to him  
23 well, that's not good under Islam unless -- unless you  
24 make it into an act of jihad.

25 Khalil says I don't want to hurt anyone else. He

1 says that he's ill, not feeling well, and he may go to the  
2 hospital, and then within a day and a half he's arrested.  
3 So that's when the arrest occurred in this case.

4 I think there was great concern that Mr. Rayyan  
5 was going to talk about the undercover to people on the  
6 outside, and I think they were concerned that he was going  
7 to kill himself, but he was not agreeing to an act of  
8 jihad.

9 And again, your Honor, nothing -- when they  
10 searched, they found none of the things that he talked  
11 about. He said that he had an AK-47. There is no AK-47.  
12 There's no AK-47 ammunition. He said that he had piles of  
13 it. He said that he listened to Anwar Awlaki tapes.  
14 There's none. There's simply in this case no evidence  
15 that he was preparing or planning or intending to hurt  
16 anyone, and the evidence is to the contrary.

17 Finally, your Honor, the expert opinions in this  
18 case are unanimous, and I'm going to focus on the BOP  
19 doctor, Dr. Tillbrook, because he really did an  
20 extraordinary evaluation. It lasted over a month. They  
21 observed him 24 hours a day. They used staff to do that.  
22 He reviewed all the discovery. He reviewed all the  
23 statements, the transcripts, all the arguments that the  
24 government had made about Mr. Rayyan, and he found that  
25 first of all, that Khalil was credible, treatable and not

1 dangerous. He found that Mr. Rayyan did not intend to  
2 hurt anybody, but that he made these statements to this  
3 young woman because he was trying to impress her, and it's  
4 basically out of the desperation to keep this -- it was a  
5 girl. It was another woman, and he felt that he didn't  
6 want to let her.

7 So he continued that conversation in that way, and  
8 those statements are awful, and he owns it, but he didn't  
9 intend to hurt anybody, and I think this report is  
10 fascinating, because Dr. Tillbrook discusses -- and this  
11 is a quote -- how very uncomfortable Khalil was in these  
12 conversations as they continued.

13 So, I mean, we can imagine, you know, between the  
14 depression, the substance abuse, trying to avoid an  
15 arranged marriage with his family, we can see why he would  
16 say these things, and I think what's interesting in this  
17 case it started almost as a fantasy for Khalil, and by the  
18 end he found himself in this very uncomfortable position  
19 where there was a young woman saying, let's do it. Let's  
20 make it a reality, and I think it made him sick, and he  
21 refused.

22 So, your Honor, the experts here agreed. He  
23 didn't intend to hurt others. He's not currently a  
24 danger, but he needs help in the form of community  
25 treatment, mental health counseling and substance abuse



1 treatment, and Dr. Tillbrook found that that would be  
2 ideal, the dual diagnosis community treatment.

3 Your Honor, I've made the comparison between  
4 Mr. Gregerson's case and Mr. Rayyan's case, and it's so  
5 out of whack, this plea agreement, that it makes me wonder  
6 why it is happening, and it makes me ask is Khalil being  
7 punished for being an Arab Muslim from Dearborn as oppose  
8 to a Caucasian from the suburbs? I don't know the answer  
9 to it, but his case is night and day with Sebastian  
10 Gregerson, and there's just no logical way that his  
11 sentence should even approach Gregerson's guideline range.

12 Finally, your Honor, I want to discuss one other  
13 case. This is Deshawn Lanton. Mr. Lanton was an  
14 individual who was charged with going on a public Facebook  
15 page, and threatening to bomb the police funeral for  
16 Sergeant Kenneth Steil while hundreds of officers were  
17 entering the church for the funeral. That's when he made  
18 these threats.

19 Unlike Lanton, Mr. Rayyan never communicated a  
20 threat to try to instill fear in anyone. He made dumb,  
21 false statements to an undercover, but he didn't go and  
22 try to scare so many people. That's what Mr. Lanton did.

23 Mr. Lanton also illegally possessed a gun as a  
24 felon, and he ended up with Rule 11 plea agreement, and  
25 the charge that he ended up with was providing false or

1 misleading information with a guideline range of 15 to 21  
2 months, and your Honor, I want to point out that the only  
3 reason it's that high is because he had three prior felony  
4 convictions.

5 So I want to admit -- I've marked it as Defense  
6 Exhibit B, which is the Deshawn Lanton Rule 11 plea  
7 agreement, your Honor.

8 So again, your Honor, I think -- I think it is  
9 pushing it to put Rayyan in the same category as  
10 Mr. Lanton, but I do think that in comparing the cases,  
11 there's certainly no need here for a sentence above the  
12 guideline range.

13 In conclusion, your Honor, the government has  
14 conceded that there is not a preponderance of the evidence  
15 to support relevant conduct enhancements. Whether it be  
16 terrorism, intent to cause harm, true threats, whatever it  
17 is, they have said they don't have the evidence to support  
18 it, but they are trying to back door it through Section  
19 3553, and I think they are trying to lead this Court into  
20 a sentence that would not be constitutional, and would not  
21 be legal for the factors -- for the reasons that I've  
22 discussed.

23 The overwhelming evidence in the case indicates  
24 that he didn't intend to hurt anybody, but he made  
25 horrible statements, and he owns it. His expression of

1 remorse, regret and responsibility has been extraordinary.  
2 I've never seen anything like Rayyan's letters to his  
3 family, that kind of self-reflection while locked up, and  
4 I think it speaks volumes when talking about somebody this  
5 young, because it is a developing brain, and I think he  
6 learned a lot through this process. You can see it in  
7 those letters.

8 For all of these reasons, your Honor, I'm  
9 requesting a sentence of 15 months. Thank you.

10 **THE COURT:** Thank you, Mr. Shanker.

11 Mr. Waterstreet, on behalf of the government?

12 **MR. WATERSTREET:** Do you want to hear from  
13 the defendant or me first?

14 **THE COURT:** You first.

15 **MR. WATERSTREET:** Okay. Your Honor, because  
16 Mr. Rayyan continues to present a danger to the community,  
17 the government thinks a sentence of at least 96 months  
18 would be appropriate, and as the Supreme Court said in  
19 Williams versus New York, the defendant's sentence should  
20 fit the offender, not merely the crime for which he is  
21 charged and convicted of.

22 And as we've gone through and we've already  
23 properly calculated the guidelines, that is just the  
24 initial benchmark. In the post-Booker world that we live  
25 in, your Honor, that is just a benchmark that the Court

1 can look to, and it's not necessarily reasonable in and of  
2 itself if the Court says I'm going to give a guideline  
3 range because it is the guideline range. We look at  
4 factors under 3553, and there are four circumstances in  
5 which are the goals of 3553.

6 One is to protect the public and community. The  
7 second is deterrence. The third, reflect the seriousness  
8 of his conduct and show respect for the law, and the last  
9 is to provide the need and care and education.

10 Now actually courts are encouraged to vary upward  
11 when the defendant's guidelines do not accurately and  
12 fully reflect his conduct.

13 Now the defendant in this case is charged with a  
14 person -- being a prohibited person in possession of a  
15 firearm, and lying in order to obtain that firearm. It  
16 doesn't really reflect his professed desire to engage in  
17 dangerous conduct in using a different firearm, nor does  
18 it reflect the guideline at this point his attempt to  
19 rearm himself after he was -- that firearm that he  
20 purchased illegally was taken away. It did not stop him  
21 from lying once again claiming that he is not a drug user  
22 or addict. It does not reflect the practice of using the  
23 type of gun that he wants to use to commit a violent act.

24 There is no limitation factors under 3553 and the  
25 case law on the information concerning the background,

1 character and conduct of a defendant that the court may  
2 use in its sentencing, and that's embodied in 18 U.S.C.  
3 3661, and that's because this Court is to not sentence him  
4 just on the charge, but by his conduct.

5 And I think I referenced a case from the Fourth  
6 Circuit, and it was a rather interesting case, in which  
7 the defendant, he was driving around Washington D.C. with  
8 a source of information and pointing out different  
9 buildings that he intended to blow up, the White House,  
10 the Capitol Building, but in the course of the  
11 investigation, the United States found out that he made a  
12 false statement, simply a false statement on an  
13 immigration document. He was charged with that  
14 immigration document. Never charged with the plans to  
15 commit violence acts against people who he doesn't know.  
16 Yet, the government sought and obtained an upward  
17 variance, and the Fourth Circuit said it was perfectly  
18 appropriate for the court to consider the defendant's  
19 actions above and beyond the crime charged.

20 This Court is mandated by 3553 because Congress  
21 used the word "shall," and it states under 3553(a), the  
22 courts shall impose a sentence sufficient but not greater  
23 than necessary to protect the public from further crimes  
24 of the defendant, and it is regularly upheld upward  
25 departures in guideline variances in U.S. versus Baines

1 and U.S. versus Bass which we put in our sentencing  
2 memorandum.

3 Another one is to deter the defendant from acting  
4 in the future, to deter this defendant specifically and  
5 deter others who may want to step into his shoes and  
6 engage in this type of conduct of planning out a violent  
7 act, and the government intervening just in time or too  
8 early from the defendant be charged with the terrorist  
9 act.

10 Now why do I say protection of the community and  
11 deterrence are important in this case? They are paramount  
12 when you consider this defendant and crime that he was  
13 charged with and the crime he intended to commit.

14 It is clear the defendant is dangerous. Mr.  
15 Shanker and I obviously see two different sides of a very  
16 thin pancake. He says he's nothing more than a confused  
17 individual who was suggested to engage in this activity by  
18 two women; one he claimed he only wanted to have a  
19 marriage act, and there was no chance whatsoever they even  
20 discussed engaging in any terrorist acts, but I suggest  
21 that counsel refer to the very first page. In the second  
22 contact that the defendant had with Ghadda, in which he  
23 says, after all my legal issues with the Kafir -- and  
24 Judge, we're the Kafir. We're the unbelievers -- the  
25 defendant said honestly, I'm going to do a martyrdom

1 operation. Totally out of the blue he comes up with this.  
2 This is the woman that he said wanted to marry, but he  
3 starts off the marriage with explaining, I want to do  
4 martyrdom operations to kill the unbelievers.

5 He told us what he has dreams of doing. This is  
6 not something that was suggested to him. This was not  
7 something that the government said why don't we go get a  
8 church? Why don't we go and shoot up a church? This was  
9 something that he dreamt up. How do we know this?  
10 Because he told us this is what he dreamed about. He  
11 dreamed about jihad.

12 He not only thought about it, he told his family  
13 members about it. He told his brother, his father,  
14 strangers on the internet, and the undercover employee  
15 that this is what he wanted to do, engage in jihad.

16 He had prepared himself by looking at the carnage  
17 of others who engaged in this type of behavior. He  
18 expressed approval of others who chose such a barbaric  
19 method of killing people. He kept reminders of the  
20 carnage on his phone to inspire him to not give up on his  
21 plans. This was all before he met the undercover, or even  
22 began speaking with Ghadda or the undercover.

23 Now the defense has suggested that it is only  
24 crazy talk, and he really didn't mean it, but he has shown  
25 us how much thought he put into it, and coming up with a

1 plan. He selected a place. Not a general place, but a  
2 specific place, a place he had no connection with, or  
3 reason to destroy lives of others, but to commit a general  
4 idea, and that general idea is to commit, kill innocent  
5 people.

6 He had no ill-will towards these people, a  
7 particular person that patronized this church, but he  
8 desired to make a statement. It was not his church. It  
9 wasn't a church in his neighborhood, but he knew it to be  
10 one of the largest churches in Detroit with a very large  
11 congregation. He never said that he knew any people in  
12 there or visited it, but it is not a place that he passed  
13 going to and from work. As a matter of fact, it was a  
14 place that he had to go out his way to go see.

15 We don't know how many times he went there before  
16 he started telling people about his plan, but he did know  
17 the people in that church would not be able to defend  
18 themselves because he specifically said people are not  
19 allowed to carry guns in church. They would not be  
20 expecting this. They wouldn't be prepared to stop him.  
21 He told others that -- he told others so he can get credit  
22 for the deed. He told others that it would make the news,  
23 and how he planned to kill especially women and children,  
24 and that it would be a bloodbath. He didn't try to hide  
25 his plans.



1           He knew what he needed to accomplish that goal,  
2           and he was very specific in what he needed. He needed a  
3           gun, not just his small .22 that he initially purchased,  
4           but a gun that would be capable of causing mass casualties  
5           and destruction. He was going to use his AK-47, using his  
6           words. His AK-47 that carried 40 bullets, and he told how  
7           he bought the bullets, how he practiced with it, loading  
8           and unloading it, and we know that he went and practiced  
9           with an AK-47 because he had a picture of it, and he has a  
10          picture of himself giving the sign that he supports ISIS,  
11          holding the AK-47, and saying that he's ready to hunt the  
12          Sahwat, those who oppose ISIS, and I will have you note  
13          that happened on the 17th of November, long before he had  
14          his very first conversation with the undercover.

15          He began taking steps to complete his act. He  
16          began carrying a gun that he purchased, becoming familiar  
17          with it, the way it would feel carrying a firearm, maybe  
18          to get over the nerves when the day that he would go and  
19          shoot up that church.

20          While it's true that we never found the gun that  
21          he was going to use in that church, we don't know whether  
22          when his father said he took the gun away from him,  
23          whether his father gave it to somebody else because we did  
24          not find it when we executed the search of their home. We  
25          don't know if it's with another friend or family member,

1 or maybe we just didn't know where to look.

2 The defendant has said to the undercover, you  
3 know, it's really not that tough to get a gun here in  
4 Detroit. I can get one. People come to, and he stopped  
5 his sentence. It's like buying candy over here. People  
6 from the street want to sell me a gun everyday. It's not  
7 hard to get. We don't know where he picked up that AK-47  
8 that his father took away from him. We know that he  
9 didn't buy it through a licensed firearms dealer. That's  
10 all we know, but if we listen to what the defendant says,  
11 we know a lot more.

12 Now he is attempting to convince this Court that  
13 this Court need not worry about protecting the community,  
14 need not worry about deterrence because I've learned my  
15 lesson, and we see it over and over in the stack of  
16 letters that he said that he submitted to his family.

17 Now to be honest with you, your Honor, this is  
18 kind of a twist on what we typically see in letters  
19 submitted to the Court. The vast majority of my years of  
20 practice is people who know the defendant write letters of  
21 encouragement on his behalf, asking the Court to be  
22 lenient because they know him better than the Court, and  
23 that they recommend that perhaps a break should be given.  
24 There's not one letter submitted by any of those people.  
25 The only letters are the self-serving letters by the

1 defendant, who knew he would have to face sentencing one  
2 day, and simply says, I've learned my lesson.

3 While I'm hoping that even the most unrepented  
4 person wouldn't say I've learned my lesson to not get out,  
5 because that's what defense is basically asking for, is a  
6 time served sentence. By the time we calculate the good  
7 time and the amount of time that he's been in, a 15 month  
8 sentence will allow him out, and I also assume that when  
9 I've learned my lesson means I'm not going to do it again.  
10 I'm done. I'm never going to do this again.

11 However, if we look at defendant's past conduct,  
12 we know him saying, I'm done, doesn't mean he's done. He  
13 lacks the self-control. And I'm sorry. I don't agree  
14 with defense counsel that he's suddenly become a boy to a  
15 man. He's a man when he went into jail, and he was a man  
16 that was making decisions leading up to the time that he  
17 went into jail because the defendant lacks self-control.

18 A prime example is his cell phone. Defense  
19 counsel brought up the fact that he was claiming that he  
20 wanted to commit suicide. If the Court will recall, the  
21 whole reason he was saying that he wanted to commit  
22 suicide is he feared the Detroit Police Department  
23 would -- had downloaded his images that were on his cell  
24 phone when arrested back in October 7, 2015, and because  
25 he -- and he specifically told the undercover, there's a

1 big difference between watching videos and downloading  
2 them, because when you're downloading them, that means you  
3 support ISIS, and that's what he was so worried about, and  
4 that's why he wanted to kill himself because he didn't  
5 want to have to face the day in which he would be held  
6 accountable for his actions of supporting ISIS, and  
7 following through with his plans.

8 So what did he do? He went out and bought a new  
9 phone, and what did he do after he got that new phone  
10 start? He started downloading the very same things. He  
11 can't control himself. He downloaded -- and I've provided  
12 these documents to the Court, a packet that were under  
13 seal the last time we were at a detention hearing, a  
14 detention review, and this was the large packet that had  
15 the severed heads, the dead bodies. These were all  
16 downloaded within days of him getting the new cell phone.

17 To say that he learned his lesson, again, your  
18 Honor, I disagree, and another example is here he is  
19 arrested with a firearm, carrying a concealed firearm,  
20 knowingly carrying a concealed firearm. The reason we  
21 know he knows it is because when he made his statement to  
22 the Detroit Police Department on the day that he was  
23 arrested, he knew where that gun was suppose to be. He  
24 realized, I made a mistake. I was suppose to put it in  
25 the trunk of my car, and that's what he says in a

1 handwritten statement to Detroit Police Department.

2 But, of course, when he goes to be sentenced in  
3 front of Judge Strong, well, you know, I've learned a  
4 lesson here, and that's relied upon what a salesman in  
5 a -- I want to make sure I get the quote right -- I just  
6 want to show you, Mr. Strong -- and he is referring to  
7 Judge Strong -- that I have good intentions. My advice to  
8 anyone who wants a firearm is to consult an attorney, not  
9 a gun store owner, implying that he got bad advice on how  
10 to handle that firearm.

11 But in his statement that he made on October 7,  
12 2015, he says, I just forgot to put it-- it says, I knew  
13 when I got in the car with it, I was wrong. I just forgot  
14 to put it in the trunk. I only had it for two days. So  
15 he knew what the law was the day he was arrested, but when  
16 it came time for sentencing, he implied to the judge that  
17 I've learned my lesson, and you know what? If somebody  
18 didn't give me bad advice, I probably wouldn't even be  
19 here.

20 He also lacks self-control. Another example is  
21 with marijuana. Now I think if I read the defense  
22 sentencing memorandum correctly, they claim he used drugs,  
23 quit drugs, used drugs and continued to use drugs. Yet,  
24 he told the Detroit Police Department and the FBI that he  
25 quit after he's arrested on October 7th and never used

1 drugs again. But then he has to use drugs to be able to  
2 convince this Court that he had a drug out of mind when he  
3 was talking to the undercover, but what he was saying with  
4 the undercover is the same thing he was saying long before  
5 he met the undercover.

6 He was even told by the Detroit Police Department  
7 that he was going to be tested when they interviewed him  
8 on November 30, 2015, and that he knew that he would be in  
9 trouble. He told Pretrial Services when he arrested that  
10 he, when he was arrested in February, he actually stopped  
11 using drugs a month ago, which would have made it January.

12 So he can't even stop using the drugs when he's  
13 been told that it's going to be a problem with Judge  
14 Strong if he continues to use drugs. He continued to use  
15 drugs, and he acknowledged that. He acknowledged that to  
16 the two doctors, and he acknowledged that to Pretrial  
17 Services. He has no self-control, your Honor.

18 So we can't rely upon him to protect the  
19 community. We can't rely upon him for deterrence, and  
20 unfortunately, your Honor, we can't rely upon his family,  
21 and I say this with some hesitation because as a father,  
22 brother, sister and stepmother, I can understand their  
23 desire to help out their loved one. I truly do. I truly  
24 do, but unfortunately, we can't rely upon them to protect  
25 the public.

1           For a long period of time, the family has been  
2 aware of the defendant's problems. The brother said so  
3 that he had mental problems, and he's been supporting ISIS  
4 for several years, and he talked about doing jihad and  
5 supporting terrorists. His talked sister talked about  
6 problems. His stepmother talked about issues that he had  
7 with mental problems and assaultive behavior.

8           Speaking of assaultive problems, we know the  
9 defendant has been involved in assaultive behavior, and he  
10 can't control himself, and it appears as if the family is  
11 unable or unwilling to do anything about it as well.

12           Now we know about the -- and it's in the  
13 Pre-Sentence Report about the incident when he was going  
14 to school at Starr Academy, in which he went in and told  
15 his teacher that he dreamed of bringing in a gun and  
16 shooting everybody in the class. As a result of that, he  
17 was suspended from school, had to go to counseling, and  
18 the defendant acknowledges this when he spoke to the  
19 doctor, his own doctor and Dr. Tillerson (sic), but we  
20 know that the family is not willing to intervene because  
21 his father paints a rosy picture of the defendant to their  
22 hired expert.

23           On Page 4 of the letter that Dr. Danuloff wrote to  
24 your Honor on March 29, 2016 -- I'll give the Court a copy  
25 of that. I've got a highlighted one as well, and I'll

1 mark this as Government Exhibit 1 for this hearing --  
2 second paragraph down, it begins, my interview with his  
3 father and stepmother. Can you see that?

4 **THE COURT:** This is from what now?

5 **MR. WATERSTREET:** This is from a letter to  
6 your Honor of March 29, 2016 from Dr. Lyle Danuloff, and  
7 this is Lyle Danuloff informing your Honor his  
8 conversations that he had with Mr. Abu-Rayyan's father.  
9 This is Page 4. It is the second full paragraph  
10 beginning, my interview with his father.

11 **THE COURT:** Yes.

12 **MR. WATERSTREET:** Okay. It says, the second  
13 sentence: Mr. Rayyan Rayyan, who is the defendant's  
14 father, described Khalil as a gentle child and young man  
15 who is always well-behaved.

16 Skip down to the next sentence: He asserted that  
17 his son never got into any trouble -- got into trouble,  
18 and that he graduated high school without any suspensions  
19 or disciplinary actions against him.

20 Well, the probation officer has found otherwise,  
21 and that's in the probation report. We know through a  
22 police report that -- which is Paragraph 58 of the  
23 Pre-Sentence Report -- the defendant got into fight. The  
24 police were called. A fight with his own brother. Police  
25 were called, and those charges were dismissed after his



1 brother refused to pursue the charges, but in the  
2 Pre-Sentence Report, Paragraph 72, it says the school  
3 documented inappropriate conduct, including but not  
4 limited to the following: When the defendant was in  
5 school, he was incident of shoving another student, two  
6 incidents of throwing a chair against a classroom wall and  
7 at another student, verbal intimidation of another  
8 student, attempting to instigate a fight against another  
9 student, and general disruptive behavior of the class, and  
10 this, based upon the father's statement is that he is a  
11 gentle child and young man who has never had any problems  
12 with school.

13 We know that the family was fully aware that he  
14 supported ISIS ideas and wanted to commit violent acts,  
15 because he told the undercover employee that his father  
16 knew that he supported ISIS.

17 On January 28, 2016, there's a telephone call  
18 between the undercover and the defendant, and one little  
19 snippet of that conversation -- and here's an excerpt of  
20 that, and I have the audio of the Court wishes to hear  
21 that -- and I realize that I'm dragging on a little bit  
22 here, your Honor, and I apologize -- but it says, even my  
23 dad, he knows I support Dawla, which is the state known --  
24 which references the Islamic state or ISIS. You know, he  
25 tells me everyday, you know, be careful. Watch your

1 postings. Be careful who you talk to, you know. I told  
2 him numerous times that I wanted to make jihad. I want to  
3 do an astarte operation, which is a martyrdom or suicide  
4 operation. I told my dad that, but he doesn't support it,  
5 of course, but he tells me all the time -- then it is  
6 unintelligible. I have to listen to him first.

7 So while the father doesn't necessarily wish to go  
8 out and commit jihad, he's fully aware of what the  
9 defendant's desires are, and we know that this took place  
10 because we confirmed this from a text message back and  
11 forth with the defendant in 2014. When he seized his cell  
12 phone, we were able to get his cell phone that he had with  
13 his prior -- one of his prior cell phones, and there were  
14 messages back and forth, and a text message on August 4,  
15 2014, a message to the defendant --

16 **MR. SHANKER:** Objection. I would like to  
17 have a copy of that.

18 **MR. WATERSTREET:** Sure. I'll make that  
19 Government Exhibit Number 3.

20 **MR. SHANKER:** Where's the actual discovery  
21 you gave me, because this is something that is--

22 **MR. WATERSTREET:** Right. It is part of the  
23 discovery.

24 **MR. SHANKER:** What page of the discovery is  
25 this?

1                   **MR. WATERSTREET:** I did not memorize the page  
2 of the discovery. It is part of the discovery.

3                   Do not use internet for political views. Everyone  
4 is watching, and the defendant responds back, it's just  
5 research, educational purposes. Then keep your eyes open.  
6 Don't make stupid decisions, and then he says, I'm  
7 learning about the Haij. That's all.

8                   Two days later he sends a message, Dawlat Al Islam  
9 Baqiyah, which basically means Islamic state everlasting.

10                  So right after he's told don't engage in this  
11 conversation, don't make these postings, just like his dad  
12 told him -- when he said his dad has told him before when  
13 he was talking to the undercover on January 28, 2016, he  
14 says, he tells me everyday, you know, be careful. Watch  
15 your postings, and then we find the very --

16                  **THE COURT:** I'm sorry. I may not be  
17 understanding. The messages that start in August 2014 are  
18 coming from who?

19                  **MR. WATERSTREET:** Well, your Honor,  
20 unfortunately, the information would not allow us to  
21 identify to whom was sending it to him, but what I'm  
22 saying it is consistent with his father always telling  
23 him, watch your postings, and that's why he says in that  
24 particular message watch --

25                  **MR. SHANKER:** Your Honor, I object to the

1 admission of this exhibit. First of all, we don't have a  
2 interpreter here.

3 Second of all, it doesn't have any names on it at  
4 all. It doesn't say who's talking to whom. We don't know  
5 who this is, and so I object to Exhibit 3.

6 **THE COURT:** The telephone numbers here, which  
7 among those do you attribute to the defendant?

8 **MR. WATERSTREET:** The defendant is area code  
9 (313)320-5844, and the reason we know that, he makes that  
10 statement to the Detroit Police Department when he's  
11 arrested back on October 7th. So he's the one that is  
12 sending out -- he said, it's just research, educational  
13 purposes, and then on that same cell phone, he's reading,  
14 keep your eyes open. Do not make stupid decisions. He's  
15 also reading, do the not use the internet for political  
16 views. Everyone is watching.

17 So that is his read text message, but I'll move  
18 on, your Honor.

19 Further, the family knew, and did not forewarn the  
20 authorities to protect the public, because when we  
21 recovered his new phone, we found examples of him sending  
22 out pictures of the ISIS flag -- again long before he  
23 started talking to undercover employee -- photos of having  
24 a person's heat cut off to his brother. That was on  
25 October 25th, 2015, and these are part of -- the one on

1       October 22nd, the ISIS flag was part of Government's  
2       opposition to defendant's motion for revocation of  
3       detention order. It was Exhibit C, and I will mark it as  
4       Exhibit 4, and I will ask this Court to please move to  
5       seal -- I'm moving to seal this because of the graphic  
6       nature.

7               The photo that he sent his brother Adam that we  
8       found not only in the text message that was sent and the  
9       image that was sent, but also in another location on his  
10      phone -- and I apologize to the Court. This is what the  
11      defendant felt was important to tell his brother he wanted  
12      to do on October 25, 2015.

13              **THE COURT:** Hold on for just a second.

14              **MR. WATERSTREET:** I know I'm probably causing  
15      you to run late on another matter.

16              **MR. SHANKER:** Your Honor --

17              **THE COURT:** We were late to begin with and I  
18      should have apologized at the very outset of this hearing  
19      given the length of the prior hearing that I had, and I  
20      have been told they closed the building as of 4:00. That  
21      must be weather related.

22              **MR. WATERSTREET:** Beauty of not having any  
23      windows in here.

24              **THE COURT:** Right. But it is pretty apparent  
25      that they think the weather event is going to continue.

1 I'm going want to spend some time thinking about  
2 some of the arguments that I've heard today, and those  
3 comments will lead to more discussion than we have time  
4 for this afternoon, given I kept everybody here this  
5 afternoon after the building itself has been supposedly  
6 closed.

7 So I'm incline to say that we should put this over  
8 to conclude on another day. It would probably -- my  
9 articulation of the reasons for sentence will probably --  
10 if we ended it this moment without hearing from the  
11 defendant, I think we would go beyond five, and we have  
12 the question of whether folks who have parked in various  
13 lots can retrieve their cars as late of 5:30. I don't  
14 know how that works. I know we have had problems with  
15 that in the past.

16 So I'm reluctant because I know people have taken  
17 time out of their lives to be here, hoping to see this  
18 through to a conclusion, but given the amount of time that  
19 we need to spend concluding it, and my own desire to have  
20 time to think about the arguments made on both sides, I  
21 think we should probably break and resume to conclude the  
22 sentencing hearing another day.

23 I'm starting a jury trial tomorrow morning, and so  
24 I think we may have to put it over -- I don't know how  
25 long they project that trial --

1 THE CLERK: Five full days.

2 MR. SHANKER: I will be out of town until the  
3 22nd.

4 THE COURT: Okay. Mr. Waterstreet?

5 MR. WATERSTREET: I did not bring my  
6 calendar.

7 THE COURT: Look at the 23rd, but let us  
8 know.

9 MR. WATERSTREET: The 23rd?

10 THE CLERK: A Thursday.

11 MR. WATERSTREET: I'll write it down and  
12 talk --

13 MR. SHANKER: I don't have my calendar here.

14 THE COURT: Give us at least a couple of  
15 hours.

16 THE CLERK: Morning of the 23rd or the 27th.

17 THE COURT: Mr. Shanker, do you have a  
18 preference?

19 MR. SHANKER: I have to take a look at my  
20 calendar. I'm guessing the 27th is the one that works  
21 better.

22 MR. WATERSTREET: In the afternoon?

23 THE CLERK: In the morning.

24 THE COURT: So we will continue with the  
25 arguments and hearing on that day, and again, I'm sorry.

1 I don't think I realized how much material the Court would  
2 be asked to consider, and how lengthy the arguments would  
3 be, but I want to give both sides a full opportunity to  
4 say everything that they believe the Court should consider  
5 in passing judgment on the sentence. So we'll give them  
6 that time.

7 All right. So we'll tentatively -- Mr. Shanker  
8 you might be available on the 23rd?

9 **MR. SHANKER:** I think the 27th is going to be  
10 better based on what I know, given I will be out of town  
11 before that.

12 **THE COURT:** All right. Then tentatively we  
13 will pick the date on the 27th at 9:30. Let me know if  
14 that works.

15 **MR. SHANKER:** 9:30?

16 **THE CLERK:** Yes.

17 **MR. WATERSTREET:** I will contact you if I  
18 have any problems.

19 **THE COURT:** Thanks.

20  
21 (Proceedings adjourned.)

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24  
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C E R T I F I C A T I O N

I, Ronald A. DiBartolomeo, official court reporter for the United States District Court, Eastern District of Michigan, Southern Division, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a correct transcript of the proceedings in the above-entitled cause on the date hereinbefore set forth.

I do further certify that the foregoing transcript has been prepared by me or under my direction.

s/a Ronald A. DiBartolomeo

March 20, 2017

Ronald A. DiBartolomeo, CSR

Date

Official Court Reporter